

## **How does the Economic Substance (Companies and Limited Partnership) Act, 2018 (the “Act”) Affect you?**

### **A Brief Historical Background leading to the implementation of the Act**

European Union (the “EU”) Member States adopted a Code of Conduct for Business Taxation in 1997, which addressed the issue of harmful tax practices, and established the Code of Conduct Group (the “COCG”) to police it. This was followed in 1998 by the Organisation for Economic Cooperation and Development (the “OECD”) which published a report titled "Harmful Tax Competition: An Emerging Global Issue" pertaining jurisdictions which levy either low or no corporate income tax.

Both the EU's Code of Conduct and the OECD's report highlighted an area of concern being the granting of tax advantages by certain jurisdictions which did not require any real economic activity and substantial economic presence by the companies or entities which were established in said jurisdictions offering the tax advantages.

As a result, the BVI, as well as other offshore financial centres, were required to implement legislation which addressed those concerns and issues raised by the COCG and the OECD.

### **Purpose of the Act**

The Act, which came into force on 1 January 2019, seeks to address the EU concerns about the possible misuse of BVI companies for profit shifting and the OECD’s concerns regarding economic presence.

### **Salient Points in the Act**

#### **To whom does it apply?**

- In a nutshell, the Act applies to all BVI companies and LPs (including foreign registered ones) (the “**Entities**”) unless they are and can prove that they are tax resident outside of the BVI in a jurisdiction that is not included on the EU’s list of non-cooperative jurisdictions.

#### **What are the requirements of the Act?**

- Entities which are tax resident in the BVI are required to demonstrate economic substance in the BVI if they carry on “**relevant activities**”, which means any of the following activities:



- (a) banking business;
- (b) insurance business;
- (c) fund management business;
- (d) finance and leasing business;
- (e) headquarters business;
- (f) shipping business;
- (g) holding business;
- (h) intellectual property business;
- (i) distribution and service centre business.

- Each Entity which is tax resident in the BVI must, in relation to any relevant activity listed above, carry out core income-generating activities in the BVI and demonstrate economic substance by reference to adequacy of expenditure, staff and premises in the BVI.

### **The Act, BOSSS and the Reporting Requirements**

The Act introduces economic substance requirements for Entities which are tax resident in the BVI and conducting “relevant activities” (defined above) and it also amends the Beneficial Ownership Secure Search System Act, 2017 (as amended) (“**BOSSS**”) so as to impose reporting requirements and the obligation to pass information to EU tax authorities in appropriate cases.

Each Entity which is tax resident in the BVI must provide information via BOSSS to the BVI International Tax Authority (the “**ITA**”) to enable the ITA to determine whether or not the entity is carrying on relevant activities during its financial period and, if so, whether it is complying with the economic substance requirements. Sinclairs (BVI) is able to assist you with a review and legal opinion on your Entity’s activities and the applicability of the Act.

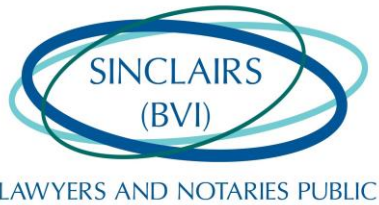
Pursuant to amendments to BOSSS, entities are required to submit basic information on their tax residency and on the activities that they conduct on an annual basis.

The ITA has investigative and enforcement powers which it may employ to request further information from an Entity. The ITA will conduct periodic on-site visits which are to be conducted randomly and also on a risk based approach.

The ITA may impose penalties for failure to provide required information and/or for operating an Entity in breach of the economic substance requirements.

### **EU Member States**

EU member state tax authorities are notified of the information held on BOSSS which relates to an Entity which has a beneficial owner in the member state, which is registered in a member



state or claims to be tax resident in a member state.

For further information, please contact **Sinclairs (BVI)** at [bvi@sinclairsoffshore.com](mailto:bvi@sinclairsoffshore.com). *The foregoing is for general information purposes only and is not intended to replace or substitute legal advice. This guide is provided to clients of Sinclairs (BVI) and is not to be circulated or published without prior written permission*